STATE OF MICHIGAN
IN THE SUPREME COURT
APPEAL FROM COURT OF APPEALS
(Markey, P.J., Cavanagh and Griffin, J.J.)

DAVID SANCHEZ,

Plaintiff-Appellant and
Cross-Appellee,

v

EAGLE ALLOY, INC.,

Defendant-Appellee and
Cross-Appellant,

and

SECOND INJURY FUND
(DUAL EMPLOYMENT PROVISION),

Defendant-Appellee.
_____/

Supreme Court No. 123114

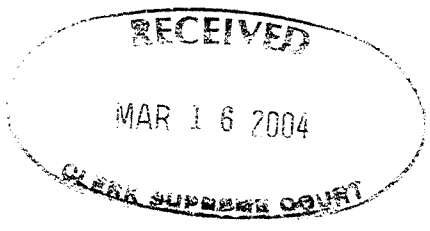
Court of Appeals No. 238003

Worker's Compensation Appellate
Commission No. 00-0248

BRIEF ON APPEAL
OF DEFENDANT-APPELLEE
SECOND INJURY FUND (DUAL EMPLOYMENT PROVISION)

Michael A. Cox
Attorney General

Thomas L. Casey (P24215)
Solicitor General
Counsel of Record



Victoria A. Keating (P36890)
Assistant Attorney General
Labor Division-Workers' Compensation Unit
Cadillac Place
3030 West Grand Blvd., Suite 10-161
Detroit, Michigan 48202
(313) 456-0080

Attorneys for Defendant-Appellee
Second Injury Fund
(Dual Employment Provision)

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COUNTER-STATEMENT OF BASIS OF COURT'S JURISDICTION

Pursuant to Michigan Court Rule 7.301 (A)(2) and (7) and MCL 418.861a(14) this Court has jurisdiction to entertain timely filed applications for leave to appeal from orders and opinions involving the Worker's Compensation Appellate Commission. Section 861a(14) provides as follows:

> The findings of fact made by the commission acting within its powers, in the absence of fraud, shall be conclusive. The court of appeals and the supreme court shall have the power to review questions of law involved with any final order of the commission, if application is made by the aggrieved party within 30 days after the order by any method permissible under the Michigan court rules.

COUNTER-STATEMENT OF QUESTION PRESENTED

Is the Court of Appeals' holding that Plaintiff Sanchez, an undocumented alien, was an "employee" as defined by MCL 418.161(1)(*l*) supported by the facts and the law, requiring affirmance by this Court?

COUNTER-STATEMENT OF PROCEEDINGS AND FACTS

Plaintiff-Appellant David Sanchez (Sanchez) was born in Mexico on December 9, 1957. He lived in Mexico until 1989, when he entered the United States illegally. Sanchez first lived in California, where he worked construction for seven years (1b-2b, 9b).[1] In 1997 he came to Michigan. He began working at defendant-appellant Eagle Alloy, Inc., (Eagle Alloy) a steel foundry, in March of 1997. A few months later he took a second job, at West Michigan Foundry (13b).

On September 29, 1998 Sanchez sustained a crush injury to his right hand while working at Eagle Alloy. He was taken to Hackley Hospital, and then by ambulance to Grand Rapids where he was treated by Dr. Ronald Ford. As of the trial in this case Dr. Ford was still treating Sanchez (3b).

After his injury Sanchez returned to work within his medical restrictions at Eagle Alloy when he was able. Eagle Alloy voluntarily paid workers' compensation for those periods he was unable to work (3b-5b, 18b). Sanchez never returned to his job at West Michigan Foundry (7b).

Sanchez had five surgeries on his injured hand. The last surgery was done July 7, 1999. Sanchez planned to return to work at Eagle Alloy the first week of August, 1999 (3b-6b).

In the meantime, however, Eagle Alloy had learned that Sanchez had a social security number that did not match up with government records. On investigating, office manager Connie Larson found there were 37 employees whose given social security numbers did not match up (19b-20b, 25b).

Larson said she told Sanchez about the problem when he came to work on August 6, 1999. He admitted to her his social security card was invalid, and that he was an illegal alien.

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[1] Numbers in parentheses preceded by "b" refer to pages of the Appellee's Appendix.

She told him Eagle Alloy could no longer employ him because of this, but that they would continue to pay his medical benefits (21b-22b). Larson told Sanchez that he would be rehired if he could produce documentation that he was in the United States legally (22b, 24b). Larson said she did not know about Sanchez' illegal status until she talked to him on August 6, 1999 (26b).

Sanchez' testimony confirmed Larson's. He admitted he was in the country illegally (10b-11b). He said he had paid someone to "cross him over" from Mexico into the United States. He then bought a fake social security card for $30, and a fake resident alien card (8b-9b). Sanchez admitted the cards were forgeries (14b-15b).

Larson said there was a job for Sanchez when he returned to work in August 1999 that was within the restrictions set by his doctor of "return to work one-handed . . . two to four hours a day." (17b). In his testimony Sanchez said that his after-injury job at Eagle Alloy was easy, and he could do the work. He said that after his latest surgery (in July 1999) he could not work with hot parts as this would have bothered his hand (12b, 16b). Larson said there were a variety of jobs available for Sanchez in August 1999 which did not involve heat (23b). The work would have paid Sanchez's normal wage of $9.00 per hour (17b-18b).

In a decision mailed June 6, 2000, the magistrate found Sanchez was entitled to wage loss benefits through August 6, 1999, the date when Eagle Alloy discovered his "illegal alien" status. Eagle Alloy remained liable for medical expenses related to the injury.

Sanchez filed a claim for review with the Worker's Compensation Appellate Commission (WCAC), arguing that he was entitled to on-going weekly wage benefits. In an Opinion and Order mailed April 12, 2001, the WCAC reversed the denial of wage loss benefits on the basis of his illegal alien status, and remanded the case to the magistrate for a determination as to whether he was entitled to on-going benefits based on other factors.

After remand, by Order mailed July 2, 2001, the magistrate found Sanchez was entitled to ongoing wage loss benefits. Defendant Eagle Alloy appealed that decision to the WCAC.

In a decision mailed October 30, 2001 the WCAC affirmed the finding of ongoing disability, and the award of benefits. Eagle Alloy appealed that decision to the Court of Appeals. At that point the Sanchez case was consolidated with *Vasquez v Eagle Alloy*.

On January 7, 2003 the Court of Appeals issued its decision in the consolidated cases. The Court held that Sanchez (and Vasquez) were "employees" of Eagle Alloy when injured, as that term is defined under MCL 418.161(1)(*l*), and were in fact required to invoke the exclusive remedy of the Worker's Disability Compensation Act (WDCA), 1969 PA 317, as amended MCL 418.101, *et seq* instead of a tort-based remedy. The Court, however, denied benefits after the point in time where it was discovered that the claimants had illegally obtained identification and used the fake documents to obtain employment. The Court concluded this constituted the "commission of a crime," requiring suspension of benefits under MCL 418.361(1).

Sanchez and Eagle Alloy both filed applications for leave to appeal the Court of Appeals' decision to the Michigan Supreme Court. By Order dated November 7, 2003 leave was granted.

The defendant-appellee Second Injury Fund (Dual Employment Provision) (Fund) has filed its brief in this matter specifically to address the issue of whether the term "aliens" in § 161(1) of the WDCA includes undocumented aliens. It is the Fund's position that it does, and that the Court of Appeals' decision on this issue should be affirmed.

ARGUMENT

The Court of Appeals' holding that plaintiff Sanchez, an undocumented alien, was an "employee" as defined by MCL 418.161(1)(*l*) is supported by the facts and the law, requiring affirmance by this Court.

A. Standard of Review:

On appeal, issues of law are reviewed de novo. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991); *McKenney v Crum & Forster*, 218 Mich App 619, 622; 554 NW2d 600 (1996).

"Issues concerning the interpretation and application of statutes are questions of law that [are decided] de novo." *McJunkin v Cellasto Plastic Corp*, 461 Mich 590, 596; 608 NW2d 57 (2000). See also *Lincoln v General Motors Corp*, 461 Mich 483, 489-90; 607 NW2d 73 (2000).

B. Interest of the Second Injury Fund (Dual Employment Provision):

The Fund is a trust fund created by MCL 418.501(1) of the WDCA. The Fund is managed by three trustees appointed by the governor with the advice and consent of the Senate, pursuant to MCL 418.511 of the Act. The Fund is a party defendant in this case because Eagle Alloy asserted its entitlement to reimbursement from the Fund pursuant to MCL 418.372 for a pro rata portion of any weekly benefit which Eagle Alloy might have been ordered to pay to plaintiff.

C. Statutory Provisions Involved:

1. MCL 418.161

MCL 418.161, in relevant part, states as follows:

> (1) As used in this Act, "employee" means:
> . . . .
> (*l*) Every person in the service of another, under any contract of hire, express or implied, including aliens . . . .

2. **MCL 418.131**

MCL 418.131 states:

> (1) The right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease. The only exception to this exclusive remedy is an intentional tort. An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. The issue of whether an act was an intentional tort shall be a question of law for the court. This subsection shall not enlarge or reduce rights under law.

D. **Argument:**

The Court of Appeals correctly held that Sanchez was an "employee" as defined by MCL 418.161 of the WDCA. As stated above, the WDCA defines "employee" for purposes of workers' compensation as "[e]very person in the service of another, under any contract of hire, express or implied, including aliens . . . ." (emphasis added).

Eagle Alloy argues that the term "aliens" in § 161 of the WDCA does not include undocumented, so-called "illegal" aliens. However, the statute makes no such distinction, and such a distinction should not be read into it. The primary goal of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mutual Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998); *Robertson v DaimlerChrysler Corp*, 465 Mich 732, 748; 641 NW2d 567 (2002); MCL 8.3a. If the Legislature had intended to limit the definition of an "employee" as to "aliens" to mean only "legal" aliens, it would have done so when drafting the statute. Cases dealing with interpretation of statutory words make it clear that strained interpretations, like that urged by Eagle Alloy, are not appropriate. "No phrase, clause, or word of a statute should be ignored in construing the statute, nor should the intent of the Legislature be defeated by a technical or forced interpretation

of the statutory language." *Johnston v Hartford Ins Co*, 131 Mich App 349; 346 NW2d 549 (1984), *lv den* 419 Mich 893 (1984); *Melia v Employment Security Comm*, 346 Mich 544; 78 NW2d 273 (1956)

Courts interpreting statutes to determine and give effect to Legislative intent are required to give the statutory words their ordinary meaning. *Jones v Grand Ledge Public Schools*, 349 Mich 1, 10; 84 NW2d 327 (1957); *Bingham v American Screw Products Co*, 398 Mich 546, 563-564; 248 NW2d 537 (1976). The ordinary meaning of words contained in statutes may be determined by dictionary definitions. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). As the Court of Appeals noted on page 6 of its decision in this case, *Black's Law Dictionary* (6th ed) (1990) defines "alien" as "[a] foreign born citizen who has not qualified as a citizen of the country." *The American Heritage Dictionary, Second College Edition* (1985) defines "alien" as a person "[o]wing political allegiance to another country or government; foreign."

A further explanation of the limited review to be accorded clear statutory language, like that found regarding "aliens" in § 161(1)(*l*) of the WDCA, is set out in this Court's decision in *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402-403; 605 NW2d 300 (2000), as follows:

> When reviewing questions of statutory construction, our purpose is to discern and give effect to the Legislature's intent. We begin by examining the plain language of the statute. Where that language is unambiguous, we presume that the Legislature intended the meaning clearly expressed – no further judicial construction is required or permitted, and the statute must be enforced as written. We must give the words of a statute their plain and ordinary meaning, and only where the statutory language is ambiguous may we look outside the statute to ascertain the Legislature's intent. [citations omitted]
>
> > The primary goal of judicial interpretation of statutes is to ascertain the intent of the Legislature. The first criterion in determining intent is the specific language of the statute. The Legislature is presumed to have intended the meaning it plainly expressed. If the plain language of the statute is clear, no further judicial interpretation is necessary. [*In re Worker's Compensation*

Lien (Ramsey v Kohl), 231 Mich App 556, 561; 591 NW2d 221 (1998) (internal citations omitted).]

The Legislature, in drafting § 161 of the WDCA, clearly included all "aliens" as "employees" covered by the WDCA. One of the consequences of the WDCA coverage is that covered injured workers have no right to bring a negligence tort action against their employer. "Under the WDCA, injured employees have no right to sue under negligence principles even though they may have lost the ability to work and advance in their fields of choice." *DeBenedetto, supra*, at 409. This language refers to the "exclusive remedy provision," set out in MCL 418.131, which states:

> (1) The right to the recovery of benefits as provided in this act shall be the employee's exclusive remedy against the employer for a personal injury or occupational disease. The only exception to this exclusive remedy is an intentional tort. An intentional tort shall exist only when an employee is injured as a result of a deliberate act of the employer and the employer specifically intended an injury. An employer shall be deemed to have intended to injure if the employer had actual knowledge that an injury was certain to occur and willfully disregarded that knowledge. The issue of whether an act was an intentional tort shall be a question of law for the court. This subsection shall not enlarge or reduce rights under the law.

The reasoning behind the "exclusive remedy" of the worker's compensation system was summarized in *Sweatt v Dep't of Corrections*, 247 Mich App 555, 566; 637 NW2d 811 (2001), *rev on other grounds* 468 Mich 172; 661 NW2d 201 (2003):

> The worker's compensation act is a self-contained legislative scheme. *Perez v State Farm Mut Automobile Ins Co*, 418 Mich 634, 649; 344 NW2d 773 (1984). The purpose of the worker's compensation act is to compensate a claimant for lost earning capacity caused by a work-related injury, under a comprehensive scheme that balances the employer's and the employee's interests. *Eversman v Concrete Cutting & Breaking*, 463 Mich 86, 92-93; 614 NW2d 862 (2000); *Ramon Perez, supra*, [*v Keeler Brass Co*, 461 Mich 602, 608; 608 NW2d 45 (2000)] at 610-611; *Mattison v Pontiac Osteopathic Hosp*, 242 Mich App 664, 672; 620 NW2d 313 (2000). An injured employee is eligible for compensation regardless of whether the employer was at fault, and, in return, the employer is immunized from tort liability. *Eversman, supra; Simkins v General Motors Corp (After Remand)*, 453 Mich 703, 711; 556 NW2d 839 (1996). [emphasis added]

If Sanchez was precluded from worker's compensation under the WDCA because of his undocumented status, he might have recourse to a tort remedy. In *Melendres v Soales*, 105 Mich App 73, 78; 306 NW2d 399 (1981), *lv den* 413 Mich 916 (1982), a case involving a tort action filed by an undocumented alien, the Court held that a plaintiff's status as an "illegal" alien was totally irrelevant to the question of liability. If undocumented aliens are not covered by the WDCA, Michigan employers who inadvertently hire undocumented aliens would lose the protection the worker's compensation system provides.

Section 161(1)(*l*) states that "aliens" are "employees" under the WDCA. That plain language is not subject to judicial interpretation, and the Court of Appeals holding on this issue should be affirmed. *DiBenedetto, supra.*

RELIEF SOUGHT

WHEREFORE, the Defendant-Appellee Second Injury Fund (Dual Employment Provision) respectfully asks this Court to affirm the holding of the Court of Appeals that Sanchez was an "employee" within the meaning of the Workers' Disability Compensation Act.

Respectfully submitted,

Michael A. Cox
Attorney General

Thomas L. Casey (P24215)
Solicitor General
Counsel of Record

Victoria A. Keating

Victoria A. Keating (P36890)
Assistant Attorney General
Labor Division-Workers' Compensation Unit
Cadillac Place
3030 West Grand Blvd., Suite 10-161
Detroit, Michigan 48202
(313) 456-0080

Attorneys for Defendant-Appellee
Second Injury Fund
(Dual Employment Provision)

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